DOCUMENT RESUME

ED 337 282 PS 019 868

AUTHOR Shaughnessy, Mary Angela
TITLE Catholic Preschools: Some Legal Concerns.
INSTITUTION National Catholic Educational Association, Washington, D.C.
REPORT NO ISBN-1-55833-055-0
PUB DATE 90
NOTE 54p.
AVAILABLE FROM National Catholic Educational Association, 1077 30th Street, NW, Washington, DC 20007-3852.
PUB TYPE Guides - Non-Classroom Use (055) -- Legal/Legislative/Regulatory Materials (090)

EDRS PRICE MF01/PC03 Plus Postage.
DESCRIPTORS *Catholic Schools; Child Abuse; *Civil Law; Constitutional Law; Corporal Punishment; *Federal Regulation; Government School Relationship; Handicap Discrimination; Libel and Slander; Parent Materials; *Preschool Education; Racial Discrimination; Search and Seizure; Sex Discrimination; *Torts
IDENTIFIERS *Canon Law; Common Law; *Contract Law; Negligence

ABSTRACT

This publication looks at the effect of the law on preschool programs conducted by nonpublic agencies. In the first chapter, a distinction is drawn between day care and preschool. The second chapter deals with sources of the law that are applied to preschool. Canon law affects Catholic schools. Catholic schools, as well as public schools, are subject to four types of civil law: (1) constitutional law; (2) contract law; (3) federal and state statutes and regulations dealing with issues such as sexual, racial, and handicapped discrimination; child abuse; and police and criminal checks; and (4) common law. The third chapter concerns legal issues for the preschool involving tort law. Tort suits in schools are generally of four classes: (1) negligence, which requires that a duty exists; that a violation of duty occurred; that the violation was a proximate cause of injury; and that injury occurred; (2) corporal punishment; (3) search and seizure; and (4) defamation of character. The fourth chapter notes that preschool parent handbooks should address issues such as the preschool philosophy and objectives, admission and academic policies, the discipline code, field trips, health and safety, emergency procedures, considerations concerning noncustodial parents and other relatives, and parents' signed agreement to the provisions of the parent handbook. A bibliography of 14 items, and a list of unpublished preschool materials, are included. (BC)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

Catholic Preschools: Some Legal Concerns

Mary Angela Shaughnessy, SCN

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

X This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY
P. Kokus

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

ED339728

PS 019868

NATIONAL CATHOLIC EDUCATIONAL ASSOCIATION

BEST COPY AVAILABLE

Catholic Preschools: Some Legal Concerns

Mary Angela Shaughnessy, SCN

National Catholic Educational Association

© Copyright 1990, National Catholic Educational Association, Washington DC, All rights resrved.
ISBN # 1-55833-055-0

Table of Contents

Dedication iii

Acknowledgments v

Preface vii

Chapter One What Is a Preschool? 1

Chapter Two Sources of the Law Applied to Preschool 5

Chapter Three Tort Law: Some Legal Considerations for the Preschool 15

Chapter Four Contents of Handbooks: Legal Protection for All 27

Bibliography 41

Index 43

About the author ..... back cover

Dedication

This work is lovingly dedicated to my nieces and nephew—Laura, LeAnn, Kathryn, and Michael Shaughnessy —whose early childhood has been a blessing for me

Mary Angela Shaughnessy, SCN

Acknowledgments

The author wishes to acknowledge persons who have been influential in the writing of this work. Robert J. Kealey, Executive Director of the NCEA's Elementary Department, invited the author to explore the topic of Catholic preschools and the law. The author is grateful to directors of three early childhood education programs who provided helpful information on practical aspects of pre-school administration: Sister Barbara Campbell of the Wheeling/Charleston Office of Education, Ms. Victoria May of Spalding University Pre-School, Louisville, Kentucky, and Ms. Charlotte Vieira of the Little Angels Program at South Catholic High School in Hartford, Connecticut.

Miriam Corcoran, SCN of Louisville, served as proof-reader and offered valuable editorial assistance. Finally, the author is grateful to the many persons in the ministry of Catholic education who have shared their journeys with her.

Preface

During the last several years across the country, preschool program after preschool program has opened. In the last seven years, the number of children attending preschools associated with Catholic elementary schools has more than tripled. The projections indicate that during the 1990 - 1991 school year over 100,000 children will be in Catholic preschool programs.

The astounding growth of Catholic preschool programs may be attributed to the fact that parents have always recognized the soundness of Catholic elementary schools. Parents know that the educational programs in Catholic schools are sound, that the teachers care about children, and that a safe disciplined school environment reflects in every aspect the ideals Jesus presents to all in the Gospel. Parents attribute their hopes and greatest treasures in these Catholic school preschool programs. These programs are their choices.

Today's society places great demands on Catholic school principals and on the administrators and teachers in Catholic preschools. Therefore, these educators must clearly understand their responsibilities and obligations, especially as they relate to the health and safety of the children.

The Department of Elementary Schools Executive Committee encourages the spread and expansion of preschool programs associated with Catholic elementary schools. However, it also seeks to insure that all these programs are of the highest quality.

The Department of Elementary Schools of the National Catholic Educational Association presents *Catholic Preschools: Some Legal Considerations* as an aid and guide to its members who minister to the youngest of God's children.

Sister Mary Angela Shaughnessy is well known to the NCEA family from her previous writings which include the two books *A Primer on School Law: A Guide for Board Members in Catholic Schools* and *School Handbooks: Some Legal Considerations,* her bimonthly column in *NCEA NOTES* and her frequent presentations at diocesan and national conventions.

This publication looks at law as it affects preschool programs and those conducted by nonpublic agencies. It examines in great detail the obligations of contract and the requirements of supervision. Finally, the author presents many suggestions for items that should be included in parent handbooks. All of this is done in a most readable style. A detailed index makes the book especially valuable for quick reference.

August 15, 1990

Bonnie Pryor
President

Robert J. Kealey, Ed.D.
Executive Director

Department of Elementary Schools
National Catholic Educational Association

CHAPTER ONE

Introduction: What is a Preschool?

Preschools have experienced tremendous growth during the last two decades. Reasons for this unprecedented expansion include the entrance or return of mothers into the workplace while their children are under six years of age. In the last few years, in particular, the increase in numbers of young children because of the "baby boomers'" families, has provided more clients for preschool programs. Catholic schools and parishes have responded to the need for preschools. Administration of preschools requires expertise, planning, and knowledge of legal responsibilities and liabilities.

A basic question that must be answered is "What is a preschool?" Some educators and parents consider any placement in an educational setting occurring before the child enters kindergarten as preschool education.

Others distinguish preschool from day care by defining preschool as an educational experience for children between the ages of three and five. Some educators seem to believe that preschool is whatever one defines it as. Even the government appears unclear as to what exactly constitutes preschool. A number of lawsuits dealing with the day care/preschool dilemma contain governmental definitions of preschool.

One often quoted definition comes from the Wage and Hour Administrator, WLH Publication 1364, pp. 1-2; R.R. 51-52; A.R. 59-60:

> The term 'preschool' includes any establishment or institution which accepts for enrollment children of preschool age for purposes of providing custodial, educational, or developmental services designed to prepare the children for school in the years before they enter the elementary school grades. This includes day care centers, nursery schools, kindergartens, head start programs and any similar facility primarily engaged in the care and protection of preschool children.

Webster's Ninth New Collegiate Dictionary (1987) offers this definition: "Preschooler is defined as a child not yet old enough for school" (p. 930). Some courts and state legislatures have taken a more conservative approach—day care is infancy to age three; preschool is age three and above.

The problem presented by these definitions is obvious: if preschool includes everything from day care to kindergarten, there is no need to differentiate levels within the classification. States, however, have much more stringent requirements for day care operations than for preschools. Indeed, a survey of the statutes of many states reveals little, if anything, on the subject of preschools. On the other hand, most states have explicit, detailed legislation regarding day care centers. In the past, day care centers have been viewed as providing a custodial function, a place for the child's physical and emotional needs to be met when the child cannot be with parents. Today, day care centers are definitely concerned with providing more than physical care and hugs; the day care center of the 1990s is involved in the developmental education of its charges.

This book concerns preschools in the Catholic school setting. The preceding discussion is included to demonstrate how complex an issue preschool is; experts and lawmakers have trouble defining its parameters. It is important that Catholic schools beginning or continuing a preschool program define their constituencies carefully.

Traditionally, preschools have accepted children between the ages of three and five, with adjustments made at the upper end of the scale for those students who do

not enter kindergarten at age five. The focus of this book, then, is the legal concerns of the traditional preschool in the Catholic school setting. The philosophy of an educational institution is supposed to provide the basis out of which all policies and procedures are developed, and all activities are planned. A philosophy answers the question, "What do we as Catholic educators say that we are doing in this school?" The philosophy for the Catholic school of which the preschool is a part must provide guidelines for the preschool. However, the preschool should also have a philosophy within a philosophy, a statement of its particular ministry within the school.

A preschool does not exist in a vacuum within a parish and/or school. As the next chapter will consider, preschools are part of both the canon law and civil law structures of the larger body of which they are a part.

Specific governance structures for preschools should be determined before the preschool begins operation. If the preschool is housed in the same building(s) as the elementary school and shares the physical facilities with the elementary school, a good management argument can be made for having one principal or chief executive officer for the building, with the preschool administrator reporting to the principal.

However, in these days of religious education and youth ministry programs occupying the same space as the parish school, there are certainly valid arguments for program autonomy. If the preschool director is to be independent of the school principal, areas of authority and responsibility should be determined , if at all possible, prior to the commencement of the preschool. Whatever the administrative arrangements, the preschool is part of the parish in a parish setting, part of the regional and/or diocesan school in that setting, and part of the institution owned by a religious congregation or board of trustees in a school owned by one of those bodies.

Day Care: A Word of Caution

As indicated in the discussion above, there is a real distinction between *day care* (for children ranging from infancy to three years of age) and *preschool* (for children from three to five years of age.) Day care is much more

stringently regulated by the states than is preschool. State health departments, rather than state departments of education, are usually charged with the licensing of day care centers.

Some Catholic institutions are calling programs preschools and accepting children from infancy through three years and above. Although a case can be made for a preschool including children of any age, administrators must be sure that state law permits such use of the term "preschool." Operating what the state considers to be a day care center in violation of state law can carry serious liabilities for all involved in the administration of the program.

If children in the traditional "day care" ages are accepted into a preschool, administrators would be well advised to adhere to all day care requirements and to seek day care licensing. Operation of such a program should be undertaken only after serious consideration of all potential liabilities and after consultation with legal counsel.

In any case, "drop in programs," in which a parent may drop off a child for a day with no previous meeting or discussion with the administrator, should be scrupulously avoided.

CHAPTER TWO

Sources of the Law Applied to Preschool

Preschools are subject to the same laws, both church and civil, to which any other educational structure within the Catholic Church is obliged.

CANON LAW

Canon or church law controls both the existence and continuance of Catholic schools. A Catholic school can call itself Catholic only with the approval of the bishop. A preschool is no exception. In cases in which the preschool is operating within a parish without a traditional school, the preschool itself is subject to the bishop in matters of faith and morals and in any other areas governed by the Code of Canon Law.

A thorough consideration of canon law is beyond the scope of this work. It is important, though, to understand that there are four kinds of Catholic schools in the United States today: the diocesan school, the parish school, the regional school and the school owned by a separate body, a religious congregation or a board of trustees. A preschool may be one of these entities or a part of such an entity. Although most Catholic preschools at this point in time are either parish or regional schools, a brief consideration of the four types may be helpful in describing the role of canon law in the school.

The diocesan school, which has traditionally been associated with secondary education, is ultimately under the jurisdiction of the bishop. Diocesan schools are generally established by the bishop and are directly under his authority.

The parish grade school is a second kind of Catholic school. Grade schools have historically been supported by parishes which are governed by pastors who are the ultimate authority in a parish, subject only to the higher authority of the bishop.

The regional school is a hybrid of the parish and the diocesan school. Today it is not uncommon to see a number of parish schools consolidating and becoming regional schools. Governance structures take different forms in the regional school. Whatever the administration, the bishop maintains direct authority over the school.

The fourth type of school is one owned by a religious congregation or other independent body, such as a Board of Trustees. These bodies are not as directly aligned with the diocese as are the other three types of schools. While a parish school is part of what canon law calls the juridic person of the parish (juridic person is the canon law equivalent of a civil law corporation), the independent school is a juridic person in its own right or is part of the juridic person represented by the religious congregation in that diocese.

Those who administer preschools must understand that they operate with the same constraints and responsibilities as any other educational ministry sponsored by the Catholic Church in a diocese.

CIVIL LAW

Civil law governs Catholic schools. The four sources of that law are Constitutional law, contract law, statutes and regulations, and common law.

CONSTITUTIONAL LAW

Constitutional law is the main source of the law affecting public schools. Constitutional protections are guaranteed by the government which pledges to respect certain rights outlined in the Constitution. Since a public

school is a government agency, it is bound to the same Constitutional requirements that bind any governmental agency.

The Catholic school is a private agency, and such agents do not have to enforce Constitutional protections. Thus, one can legislate in a Catholic school what cannot lawfully be mandated in a public school. For example, dress can be regulated in a Catholic school by the requirement of uniforms. Speech can be regulated; Catholic school students would probably not be allowed to make statements or wear buttons promoting a position at odds with that of the Catholic Church. Such restrictions would not be permitted in a public school because the First Amendment to the Constitution protects freedom of speech.

The Fifth and Fourteenth Amendments to the Constitution protect the due process rights of individuals. Public school students, for example, cannot be dismissed without due process protections, the minimum of which are *notice* and a *hearing* before an *impartial tribunal.* After making the appropriate request, parents and students have the right to confront accusers, cross-examine witnesses, call witnesses, and have an attorney present. While Catholic schools operating from the standpoint of Gospel imperatives would certainly meet the three minimal elements before imposing discipline, up to and including dismissal, there is currently no legal stipulation that any other procedures be required in the private sector.

In effect, a parent enrolling a child in a Catholic school surrenders Constitutional protections because a Catholic school is not a government entity. The same principle applies when a parent enrolls a child in some other private institution, such as the YMCA. When one enters a private organization, one leaves Constitutional rights at the door. Those rights can always be reclaimed when one leaves the private sector; while one is in the private institution, sources other than the Constitution must provide protection.

CONTRACT LAW

The main source of the law for the Catholic preschool is contract law. In its simplest terms, a contract is an

agreement between two legally competent parties in which each receives a benefit and each incurs a detriment. A parent is legally competent to enter into a contract with a Catholic preschool for the education of children. The parent incurs a detriment (paying tuition, abiding by school rules) and receives a benefit (the education of the child). The school incurs a detriment (educating the child) and obtains a benefit (receiving payment). In the case of a dispute, courts will look to the language of the contracting documents to determine the outcome. Enrollment contracts and parent/student handbooks are parts of the contract. It is imperative that these two documents be in harmony. Chapter IV will consider handbooks in greater detail.

STATUTES AND REGULATIONS

A third source of the law affecting education, both private and public, is statutes and regulations. Legislative bodies, both state and federal, pass laws which bind citizens. Perhaps the federal statutes with the most impact on Catholic schools are those concerning discrimination. Catholic schools may not discriminate on the basis of race, sex (unless a single sex school), national origin, and handicap (if with reasonable accommodation the school could meet the handicapped child's needs).

Religious Preference

Catholic schools may discriminate on the basis of religion and give preference to Catholic students. If such a preference is used, it should be clearly stated in brochures, handbooks, and other materials. For example, a preschool handbook might state, "Preference in preschool admission is given first to parish members, then to Catholics from other parishes, and, space permitting, to all others."

A word of caution is in order. Some Catholic schools are taking the position that non-Catholics who have been appropriately admitted to the school may be required to withdraw if a Catholic family moves into the parish and wants to enroll a child in a class that is already full. Although no such situation has yet been tested in the courts, it is likely that there will be such a test in the future. Certainly, there are moral and ethical questions

involved in such a decision. At the very least, a school intending to require non-Catholics or Catholics from other parishes to withdraw if a parish student seeks entrance, should make that position very plain in its admission materials. In effect, a parent should be told that the child is being enrolled subject to the continuation of spaces for non-parish and/or non-Catholic children.

Sexual Discrimination

Sexual discrimination must be avoided. Catholic preschools cannot seek to achieve some sort of boy/girl balance by denying admission to an otherwise qualified student because he or she is the wrong sex for the balance.

Staff hiring procedures must be sexually neutral; male and female applicants must be evaluated on the same basis.

Racial Discrimination

Racial discrimination cannot be tolerated in a Catholic preschool. To this author's knowledge there have been no lawsuits that have reached a court of record alleging racial discrimination in a Catholic school. Racial discrimination can be extremely subtle; thus, it is important that all staff members understand the importance of racial equality and be given at least some minimal instruction in ways to promote racial harmony and acceptance even among very young children.

Handicapped Discrimination

Legislation protecting the handicapped may prove particularly problematic for the Catholic preschool. Parents of a handicapped child may implore administrators to accept the child and provide whatever services the school can offer the students. What was undertaken as an attempt to meet needs can become tragic when the school fails to accommodate certain needs, and the presence of the child becomes disruptive to the program. Legislation regarding the handicapped requires that all otherwise qualified individuals be given the same consideration as all other applicants if, with reasonable accommodation on the part of

the school, the student can function in the environment. A school is not expected, for example, to spend hundreds of thousands of dollars to make a building handicap accessible. Should the administrator, with the support of the pastor and other appropriate supervisory personnel, accept a student in a physical setting that is not equipped to meet the needs of the handicapped child, it is possible that a court could rule that, having accepted the student, the school is obligated to do whatever is necessary to allow the child to function.

A preschool is very often a child's first exposure to the Catholic educational system. It is crucial that age-appropriate testing be done to determine the child's readiness for the preschool. If a physical or mental handicap should preclude the child's functioning in the preschool environment, the administrator has the right and the obligation to deny the child admission.

An administrator may wish to admit a handicapped child subject to certain restrictions. For example, an administrator may enter into an agreement such as the following with a parent or parents: "We will accept Johnny or Judy on a trial basis. If, subsequently, it becomes our professional opinion that this preschool is not an appropriate setting for the child, you will have to withdraw him/her." Such an agreement should be entered into only with the permission of the pastor and other appropriate administrators. It is strongly recommended that preschool directors considering such agreements seek advice from the parish or diocesan attorney. It is highly advisable that such agreements be written and notarized.

State Statutes and Regulations

While discrimination presents one of the best examples of statutes and regulations, there are others. Preschools will find that much of their existence is regulated by state law. States may pass statutes concerning such areas as preschool health examinations, certification of teachers, lunch programs, *et cetera.* Additionally, the state board of education, through its superintendent or other administrative personnel, can issue regulations which are binding on the preschools and their administrators. A state,

by statute or regulation, mandates the teacher/student ratio in the preschool. Barbara D. Day (1988), commenting on early childhood programs across the United States, observes that most preschool programs follow the standards developed in 1986 by the National Association for the Education of Young Children. NAEYC sets a staff/child ratio of 1:10 in a group no larger than 20 children. Day reports: "It was found in the state survey that only five states permit staff child ratios in excess of 1:10, and some states require lower ratios in their prekindergarten programs" (p. 24).

In the same way that staff requirements are set by state statute or regulation, space requirements may be mandated as well. Before beginning a preschool program, administrators should check with the state department of education for all applicable rules and regulations.

The state or city health department mandates sanitation requirements. More stringent regulations concern the under-three-years-old group; however, administrators could profit immensely by reviewing rules for the younger day care age child and incorporating as many of them as possible into the preschool setting.

A particular health concern is disease control. Students who have communicable diseases should not be allowed in school. It is important that parents understand the constraints concerning the school attendance of sick children. Suggested policies and wording will be discussed in Chapter IV, Content of Handbooks and Brochures.

Child Abuse

One final area of statutory consideration worthy of note here is that of child abuse reporting. All fifty states have laws requiring school employees to report child abuse. For example, the child abuse reporting law for the state of Kentucky is found in Kentucky Revised Statute 199.335 (2):

Any physician, osteopathic physician, nurse, teacher, school personnel, social worker. . . child caring personnel . . . who knows or has reasonable cause to believe that a child is an abused or neglected child, shall report or cause a report to be made in accordance with the provisions of this section. When any of the above specified persons is

attending a child as part of his professional duties, he shall report or cause a report to be made. . .

Preschool administrators should request a copy of the child abuse reporting laws for the state in which the preschool is located. It is of the utmost importance that all persons, both paid and volunteer, who render services in the preschool, be given inservice training in the identification of child abuse and neglect.

It is probably advisable that the preschool administrator make all child abuse and/or neglect reports so that the same individual is reporting all situations in that school setting. Each staff member should understand that, if for some reason the school administrator refuses to make the report, the staff member must file the report. When a superior fails to report suspected child abuse because the superior disagrees with the concerned subordinate, it is still incumbent on the subordinate to file a report.

If a preschool does not have a policy of the administrator's making all reports and an individual staff member files a report, the individual should immediately notify the administrator that a report has been made. It is legally risky and embarrassing for the school when social workers and/or police appear to investigate and/or question a child and the administrator knows nothing of the report.

It is not uncommon for police officers or other officials to come to a preschool for the purpose of examining a child. Administrators should decide on the appropriate procedure in this situation before it arises. Many states require that school personnel allow such examinations and questioning; legal counsel should be sought to determine the law governing this situation in a given state and to determine an appropriate policy. If the school permits the examination and questioning of a child, a school official should always be present.

Police and Criminal Checks

Many states now mandate that persons who work with children be fingerprinted; each applicant must also authorize a police check of his or her name for any criminal arrests and/or convictions. Preschool administrators must insure that all such requirements are met.

Local Codes

A few words on the topic of local (town or city) statutes and regulations are in order. The Catholic preschool is bound by these statutes and regulations. An example would be a fire code prohibiting electric lights on live Christmas trees. A preschool teacher could not decide to ignore the ordinance and use electric lights on live greens. The next chapter will discuss legal problems that can occur when negligence results in injury to a student.

COMMON LAW

A fourth source of civil law affecting schools is the common law. Common law is basically, judge-made law; it has not been enacted by the legislature. Rather, it is the body of legal decisions or precedents that have been established. In the case of the Catholic school, the English law of private association, as developed in English case law, often applies. This common law standard has to do with basic fairness: how reasonable individuals can be expected to behave with regard to each other. The common law deals with the usually accepted standards for human behavior; these standards have been enunciated by judges hearing lawsuits over hundreds of years. In the United States the system of common law includes not just all cases heard in this country but also all cases heard in England, as the U.S. system of common law is based on the British system.

The Catholic preschool is thus subject to the laws of both the church and the state. The administrator is often involved in a kind of juggling act in attempting to meet the requirements of both canon and civil law.

CHAPTER THREE

Tort Law: Some Legal Considerations for the Preschool

A fifth type of civil law is that of tort law. A tort is a civil or a private wrong. *Black's Law Dictionary* defines a tort as: A private or civil wrong or injury, other than breach of contract, for which the court will provide a remedy in the form of an action for damages. A violation of a duty imposed by general law. . . . There must always be a violation of some duty owing to plaintiff, and generally such duty must arise by operation of law and not by mere agreement of the parties. (p. 1335)

Since a tort is a wrong that is not a breach of contract, the law governing tort cases in the Catholic preschool will not be contract law but will be the same law which is applied in the public school, tort law.

Tort suits in schools can be generally classified in four categories in schools: (l) negligence; (2) corporal punishment; (3) search and seizure; and (4) defamation.

NEGLIGENCE

Negligence is the most common of all lawsuits filed against teachers and school administrators (Gatti and Gatti, l980). Even though negligence is the "fault" against which administrators must most constantly guard, it is also the most difficult case about which to predict an accurate judicial outcome. What may be considered negligence in

one court may not be considered negligence in another. It is much better, obviously, to avoid being accused of negligence in the first place than to take one's chances on the outcome of a lawsuit.

Courts operate on the principle, "the younger the child chronologically or mentally, the greater the standard of care." This principle means that one is expected to take the greatest care of the very young child. For example, one might be permitted to leave junior high school students unattended for a short period of time for a good reason. It is difficult to imagine circumstances in which a preschool teacher could responsibly leave children unattended. Courts talk about a mythical creature, the reasonable person, and ask, "What would a reasonable person in the same situation be expected to do?" Preschool administrators need to insure that all preschool staff members, both professional and volunteer, understand the legal principles of greater responsibility for younger students and of the "reasonable person" standard.

Gatti and Gatti (1983) have defined negligence as "the unintentional doing or not doing of something which wrongfully causes injury to another" (p. 246). There are four elements which must be present before a legal finding of negligence can be made. These elements, as defined by many legal writers, are: duty, violation of a duty, proximate cause and injury. If any one of the four elements is missing, no negligence and, hence, no tort can be found to exist. Since negligence is the unintentional act which results in an injury, a person charged with negligence is generally not going to face criminal charges or a prison sentence.

An examination of each of the four elements necessary to constitute a finding of negligence should be helpful. First, the person charged with negligence must have had a duty in the situation. Students have a right to safety, and teachers and administrators have a responsibility to protect the well-being of all those entrusted to their care. Teachers have a duty to provide reasonable supervision of their students. It is expected that administrators have developed rules and regulations which guide teachers in providing for student safety.

Administrators should be aware of the fact that courts may hold them responsible for student behavior and its consequences occurring on school property before or after school. Preschool administrators need to understand that children must be supervised from the time they arrive on the school grounds until the time they depart; if parents pick up children and arrive late to do so, a staff member must remain with the child until the parent arrives. Preschools can certainly charge fines and impose other penalties for late pick ups but, in no case, may a child be left unattended.

The second element involved in negligence is violation of duty. Negligence cannot exist if the administrator or teacher has not violated the duty. Courts expect that accidents and spontaneous actions can occur. If a teacher is properly supervising students in a play area, and one child picks up an object, throws it and so injures another child, the teacher will probably not be held liable. However, if a supervising teacher were to allow object-throwing without attempting to intervene and a student suffered an injury, the teacher would probably be held liable.

The third element of negligence is that the violation of duty must be the proximate cause of the injury: "The question asked is normally, 'did the educator's action or inaction' have a material and immediate effect in producing the injury?" (Permuth, Mawdsley and Daly, 1981, p. 13.) In other words, would the injury have occurred if proper supervision had been in effect? The jury has to decide whether or not proper supervision could have prevented the injury and, in so deciding, courts have to look at the facts of each individual case.

Valente (1980) commented on the concept of proximate cause:

> To be proximate, a cause need not be the immediate, or even the primary cause of injury, but it must be a *material and substantial* factor in producing the harm, "but for" which the harm would not have occurred. (p. 351)

The case of *Smith v. Archbishop of St. Louis* 632 S.W. 2d 516 (Mo. Ct. App. 1982) illustrates the concept of proximate cause. In this case, a second grade teacher kept a lighted candle on her desk every morning during May in

honor of the Blessed Mother. She gave no special instructions to the students regarding the danger of a lighted candle. One day a school play was to be held in which the plaintiff played the part of a bird and for which she had a costume partially composed of crepe paper. While the teacher was helping some students in another part of the classroom, the plaintiff's costume caught fire. The teacher had difficulty putting out the flames, and the child sustained severe facial and upper body burns, as a result of which she underwent several operations and painful treatments. Evidence indicated that she had sustained psychological as well as physical damage and that she would need ongoing psychological therapy throughout her lifetime. The trial court found for the child.

Although *Smith* involved a second grade teacher, it is easy to see how a similar accident could occur in a preschool. After *Smith* and similar cases, most school districts quickly outlawed open flames in classrooms. Elementary school children, as well as younger students, are generally not permitted to bring even birthday candles to school. Candles are probably not to be found near preschool classrooms today. However, other items are just as dangerous: pans of food or liquid cooking on a stove; art or any other materials that could be ingested; heavy furniture that could be pulled over by a young child.

The teacher in *Smith* and teachers who might find themselves witnessing unfortunate accidents in circumstances just mentioned are not the direct causes of the injury. The object (burning candle, hot liquid, *et cetera.*) is the direct cause of the injury. *Smith's* teacher and others can find themselves as the proximate cause. In other terms, a teacher's negligence can be the proximate cause if he or she *did not* do the thing that would have prevented the injury or *did* do something (put a lighted candle near children) that contributed to the injury. The concept of *foreseeability* is important in this discussion. The *Smith* court of appeals found:

Negligent supervision, like any other tort, involves a breach of a duty defendant owes plaintiff which causes plaintiff to suffer damages. . . . To recover, plaintiff need not show that the very injury resulting from defendant's negligence was foreseeable, but merely that a reasonable

person could have foreseen that injuries of the type suffered would be likely to occur under the circumstances. (p. 521)

The *Smith* case illustrates the concept of foreseeability. The plaintiff did not have to prove that the defendant could foresee that a particular injury (plaintiff's costume catching fire) had to occur; the plaintiff had to establish that a reasonable person would have foreseen the injuries that could result from having an unattended lighted candle in a classroom.

In another Catholic school negligence case, *Sheehan v. St. Peter's* 188 N.S. 2d 808 (Minn. 1971), a student lost an eye as a result of a playground scuffle. Evidence indicated that the supervising teacher had left the students unattended for several minutes; fighting and rock throwing had been in progress for some time before the student was injured.

In upholding a verdict against the school, the court found that if the teacher had been present as she should have been, the accident would probably not have occurred:

We are of the opinion that the better reasoned cases permit recovery if there is evidence from which a jury could find that supervision would probably have prevented the accident. Under [these] circumstances, a jury could properly find that had the teacher been present she would have put a stop to this dangerous activity before plaintiff was struck. (p. 871)

In *Sheehan* then, the court finds that the teacher's behavior (going into the school building when she should have been supervising) was the proximate cause of the injury; the teacher's violation of her duty of supervision was the proximate cause of the student's losing her eye.

Courts have recognized that there are times when a teacher can properly leave students unattended. Cases involving such situations have arisen, particularly in the elementary school. Keeping in mind the principle, "the younger the child chronologically or mentally, the greater the standard of care," one should properly conclude that it would be the rarest of situations in which a preschool teacher could leave students unattended. Preschool administrators should insure that teachers understand that children should never be left alone. In the case of an emergency, teachers should understand that courts will apply

the reasonable person standard. Preschool administrators should anticipate possible problem situations and discuss with the staff approaches for handling them. Because of the age of the children involved and the potential for injury if left alone, administrators would be well advised to insure that at least two adults are always within calling distance.

Administrators must understand that they can be held responsible for the actions of their teachers under a doctrine of *respondeat superior,* let the superior answer. In determining whether the administrator is liable for the tortious actions of a subordinate, courts might pose these questions: has the administrator developed a clear policy for teacher conduct in dealing with situations such as the one which resulted in a student injury? has the administrator implemented the policy? has he or she supervised teachers to make sure they are following the policy?

The fourth element necessary for a finding of negligence is injury. No matter how irresponsible the behavior of a teacher or administrator, there is no legal negligence if there is no injury. If a teacher leaves ten preschoolers alone on a playground for a half hour and no one is injured, there can be no finding of negligence and hence, no tort. Any reasonable person, though, can understand that no one in authority should take risks that may result in injury.

Most negligence cases arise in the classroom because that is where students and teachers spend most of their time. However, there are other areas that are potentially more dangerous than the classroom and, hence, a greater standard of care will be expected from teachers and administrators supervising children in those areas.

Any activity that could be categorized as a laboratory experience is potentially dangerous. At first glance one may be tempted to consider laboratory experiences as the domain of science classes. But any activity that involves using materials such as kitchen utensils or appliances could qualify as a laboratory activity. Simple gardening or plant growing could also qualify. Teachers and administrators are expected to keep all equipment in working order and to render areas used by children free of unnecessary hazards. It is also expected that students will be given safety instructions regarding the use of potentially dangerous

equipment. In *Station v. Travelers Insurance Co.,* 292 So.2d 289 (La. Ct. App. 1974) school officials were found to be negligent when injury resulted from the use of a science lab burner known to be defective.

Another area of potentially great hazard is found in athletics and physical education. Preschoolers participate in physical education activities and in structured game playing. In 1982 two authors, Clear and Bagley, writing about athletic injuries, offer timely advice to teachers at all levels of education:

> First, it must be assumed that litigation can and will arise from each and every injury that occurs. This creates an awareness that much is at stake. Second, it must be believed that the only way to avoid liability for injury is to be completely free from cause relating to it. Third, no action can ever be taken or not taken which results in injury to a student. (p. 185)

Administrators clearly need to take an offensive approach with regard to hazards, particularly in the preschool. Teachers should understand how serious the ramifications of student injury can be; not only can a student suffer pain, but also the school, the teacher and the administrator can face grave consequences if a violation of duty results in injury to a student.

Preschool administrators need to monitor carefully all activities and to provide instruction and orientation concerning procedures to all staff and volunteer members.

In developing and implementing policies for the preschool, the administrator must keep in mind the reasonableness standard and ask, "Is this what one would expect a reasonable person in a similar situation to do?" No one expects an administrator or teacher to think of every possible situation that might occur. For example, a court would not necessarily consider it unreasonable if a school did not have a rule prohibiting throwing chairs; the court could expect, though, that there would be some sort or rule, consistently enforced, encompassing the possibility of such an activity such as, "Children are not to throw objects."

Foreseeability is a key concept. Should this particular type of harm have been foreseen? No one can foresee everything that might happen, but a reasonable person can

assume that certain situations could be potentially dangerous. The teacher in *Smith* should have foreseen that children might be injured by an unattended open flame; the teacher in *Sheehan* should have foreseen that leaving students unsupervised on a playground might result in harm.

The best defense for an administrator in a negligence suit is a reasonable attempt to provide for the safety of those entrusted to his or her care by the development of reasonable policies and rules. The reasonable administrator is one who supervises teachers in their implementation of rules. Where negligence is concerned, the old adage, "An ounce of prevention is worth a pound of cure," certainly applies.

CORPORAL PUNISHMENT

Corporal punishment is perhaps one of the most controversial topics in education today. Most states allow corporal punishment in public schools. However, persons administering corporal punishment which results in injury to the student can be liable for civil torts of assault and battery.

It is indeed rare that corporal punishment would be found in a Catholic preschool. However, it is important to note that corporal punishment has been construed by some courts to mean any punitive touching. Pushing, shoving, pulling hair or limbs, and the like can be corporal punishment. Fear of lawsuits has caused some public school districts to pass regulations forbidding teachers to touch students.

It is hard to imagine a preschool administrator's deciding to forbid teachers' touching of students in the preschool atmosphere. Touching, hugging and other types of contact are very much a part of a preschool experience. While paranoia is certainly to be avoided, preschool administrators must insure that teachers understand what kinds of touching are appropriate.

SEARCH AND SEIZURE

A third tort often arising in the school setting is that of search and seizure. In the public sector, the Supreme Court has ruled that a school official need only have a reasonable cause to search a student's belongings (*New Jersey v. T.L.O.* 105 S. Ct. 733 (1985). No cases have been brought involving Catholic schools. It would seem that Catholic preschool administrators should follow the reasonableness standard from the standpoints of both civil law and Gospel imperatives. Children are to be respected; they are not without rights simply because they are small and young.

Safety requires that school officials be allowed to search students' belongings when there is a legitimate need. Today it is not uncommon to read of small children's bringing weapons to school. Preschool administrators may well believe that children's belongings should be examined daily so that no problems will arise from students' possession of dangerous items. Preschool handbooks should contain clear statements concerning examination of student property in the preschool setting.

DEFAMATION OF CHARACTER

Defamation is an unprivileged communication. It is a statement about an individual to another individual who is not privileged to receive it. *Black's Law Dictionary* defines defamation as: [T]hat which tends to injure the reputation; to diminish the esteem, respect, goodwill or confidence in which the plaintiff is held, or to excite adverse, derogatory or unpleasant feelings or opinions against him. . . . A communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him. (p. 375)

There are two types of defamation of character. Slander is oral defamation; libel is written. Obviously, it is much easier to prove libel than it is to prove slander.

Traditionally, only untruthful statements were classified as defamation. A leading writer on tort law, William Prosser, (1971) has observed that defamation can encompass a wide range of remarks; almost anything negative

said about someone could be construed as defamatory since it could affect a person's reputation or the esteem in which the person is held.

The truth is not an absolute defense. Several experts have observed that truthful statements can be defamatory (Gatti and Gatti, 1983). The truth is a valid defense only if the statement was made without malice.

Slander, because it is spoken rather than written, is much more difficult to prove than is libel. Preschool staff must be extremely prudent in their comments to parents about children other than the parents' own. Preschool staff should communicate about children only to those persons who have a legitimate, legally defensible right to know.

The numbers and kinds of records kept concerning preschool children constitute ripe ground for lawsuits. Parents can and do allege that both they and their children have been harmed by what is contained in a written record. Preschool staff members must be extremely careful in their writing of reports and records. Any documents must be both accurate and protective of the rights of the individual whose behavior is being recorded. Situations, for example, in which a child is expelled from a preschool can be most problematic if records of the disciplinary or other problems are not objective and factual.

Teachers and administrators should measure what they write against a standard requiring that what is written be *specific, behaviorally-oriented and verifiable.* It is better to say, "Johnny has not yet mastered the skill of tying his shoes," than it is to say, "Johnny is uncoordinated and may never be able to tie his shoes." A statement such as, "Within this two-week period, Mary Ann has been involved in twenty physical altercations with other students," is preferable to "Mary Ann is a real fighter. If there's a fight, you can be sure Mary Ann is in the middle of it."

Preschools often issue parent reports concerning skills mastery by the child. Focusing on behaviorally-oriented, objective statements will enable staff to offer needed information to the parent while protecting the school legally.

The following is one such checklist from a Catholic pre-school:

Marking Code: S Satisfactory N Need Improvement

Motor Development

1. Walks on tiptoes _____
2. Jumps _____
3. Hops on one foot _____
4. Balances on one foot _____
5. Catches ball _____
6. Throws ball _____
7. Works puzzles _____
8. Uses scissors _____
9. Holds pencil/ crayon correctly _____

(Campbell, 1989)

Tort law affects Catholic preschools. It is a wise administrator who studies the requirements of the law, makes those requirements known to staff members, and monitors staff performance in efforts to prevent torts from occurring in the preschool.

CHAPTER FOUR

Contents of Handbooks: Legal Protection for All

As discussed earlier in this work, preschool handbooks, brochures and advertising materials can be viewed by a court as part of the contract between the preschool and the parent. It is imperative that preschool administrators and their superiors insure that all communications concerning the preschool be accurate and factual. What cannot be provided should not be promised or even suggested.

Many preschools are located in elementary school buildings. The preschool can be legitimately seen as part of the school with which it coexists. In such a situation, the preschool handbook should be in harmony with that of the elementary school. Differences will exist, but there should be no substantial disparities except those required by age and program differences. (For a detailed discussion of parent/student handbooks in the elementary school, readers are directed to the author's work, *School Handbooks: Some Legal Considerations* published by the NCEA in 1989.)

The preschool handbook binds both the school and the parent. Parents enrolling children in the preschool should be required to sign a statement that they have read and agree to be governed by the handbook. If a parent cannot or will not sign the statement, his or her child should not be admitted to the preschool.

PRESCHOOL PARENT HANDBOOK

The remainder of the chapter will be devoted to an outline of items which should be included in a parent handbook for the Catholic preschool. The checklist which follows may help the preschool administrator judge what is needed in the preschool parent handbook and what specific additions, deletions, and/or revisions would strengthen a handbook already in use.

	What Should a Preschool Have Concerning?	What Does My School Need?
Philosophy/ Goals		
Admission Polcies		
Academic Policies/ Curriculum		
Communication		
Discipline Code		
Field Trips		
Health and Safety		
Emergency Procedures		
Nutrition		
Single Parent/Other Relative Considerations		
Visitors		
School's Right to Amend Parent(s)' Signed Agreement		

Philosophy/Goals

The philosophy answers the question, "What do we as Catholic educators say that we are doing in this preschool?" The preschool's philosophy should be similar to that of the elementary school or parish in which it is located, with appropriate distinctions because of age difference. A preschool's philosophy should tell parents what the school and its staff believe about children and how they learn.

Goals and objectives are the ways a philosophy is "fleshed out." The following is an excerpt from the handbook of an early education center located in a Catholic university:

Spalding University's unique Early Education Center provides an integrated approach to [education], addressing the intellectual, emotional, physical and social aspects of children 3 to 5 years of age. This center offers a complete educational program of skills development, creative growth and social integration, with no regard to race, creed, religion or economic level. (V. May, 1989)

Objectives

We believe that it is the responsibility of the Early Learning Center to:

1. Realize that children must be treated as individuals.
2. Guide, protect and encourage children to learn at their own rates.
3. Provide activities that are flexible for both large and small groups.
4. Provide materials for learning that relate to each age group.
5. Provide information to parents concerning the welfare of the child and activities in the school environment.
6. Meet all state and local requirements.

(V. May, 1989)

Admission Policies

The bases for admission must be clearly stated. If tests are required, the handbook should explain what tests are given and how the results are used in admission decisions.

A statement that the school does not discriminate on the basis of race, sex, national origin, handicap (if student can function in the environment), and religion, if appropriate, should be included.

Fee requirements and policies regarding refunds should be stated.

A simple, step-by-step admission process should be outlined. The following is taken from the handbook of a preschool located in a Catholic school:

Children will be admitted into the program on a first-come, first-served basis, depending upon available space in the program for your child's age level. Children attending all day (full-time) have preference.

Steps:

1. Parents visit the center with the child before applying.
2. The Director holds an interview with the parent(s), and upon request, will provide the necessary forms for registration.
3. The Parent Handbook will then be discussed and given to the parent(s).
4. The parent must complete all registration forms, have the child's doctor fill out the medical form, and pay the registration fee and deposit.
5. Acceptance is finalized after a two-week probationary period. The Director may require the parent(s) to withdraw a child if, in his/her opinion, placement in the preschool is not in the child's and/or the preschool's best interests. (Vieira, 1989)

Academic Policies/Curriculum

This section should tell parents about the curriculum the child will experience. If there is a state-mandated preschool curriculum, the Catholic preschool should try to follow it so that the school's legal status will not be

compromised. Types of activities should be outlined for parents. A list might include: games, art, field trips, play, language development exercises, instruction in rudimentary foreign language, physical fitness exercises, handwriting and others.

This author knows of no state which mandates that all children attend preschool. Therefore, there are no stringent requirements of "passing preschool" before moving to kindergarten. When the preschool is housed in an elementary school which contains a kindergarten, students' meeting of preschool standards may be important in obtaining admission to the kindergarten. In any case, the preschool administrator would be well-advised to include in the parent handbook a list of those skills which should be mastered before a student is recommended for kindergarten.

Communication Code

Parents should be told how and when the preschool staff will communicate with them. For example, many preschools require the parent or the parent's designate to deliver the child personally to the teacher and to report any situations of which the school should be aware. A short written report concerning behavior, moods, achievement may be given parents at the end of the day.

Regular conference times should be noted. Procedures for making longer appointments should be outlined.

Discipline Code

Parents have legal and moral rights to know what will be expected of their children in the way of behavior. Preschool administrators have the responsibility to protect their programs, institutions and students from the problems that can result from serious behavior problems. Parents must understand that attendance at a preschool is a privilege, not a right. Parents must cooperate in insuring that their children behave in a manner appropriate to the preschool setting.

Preschool handbooks should contain a statement concerning the kind(s) of discipline that will be imposed upon preschoolers. A clear statement of disciplinary procedures utilized in the preschool should be given. One

preschool offers a simple explanation of procedure:

Discipline

I. Steps for correcting behavior
   A. Child sits near teacher
   B. Teacher provides another activity for child
   C. Teacher changes tone of voice
   D. Child is placed in time out area for a short period of time
   E. Good behavior is reinforced

II. If problems persist, a parent/director/child conference will be held. (V. May, 1989)

Parents must understand that continuing serious behavior problems can result in the child's dismissal from the preschool. Therefore, parents need to be told in the preschool handbook that such a possibility exists. One preschool handbook offers an excellent explanation of the procedures that will be followed before a student will be dismissed from the preschool:

Procedure for Expulsion from the Program

1. When a behavior problem occurs in the classroom, "Time Out" (2-3 minutes of sitting quietly away from the group) is given to the child, then appropriate behavior is discussed. The staff will remind the child of the rules and allow the child to join the group.
2. Regular behavioral problems are reported to the parent(s), and they are asked to help correct the situation. A written warning may be given to the parent(s) with the approval of the director.
3. The problem is related to the Director.
   A. A conference will be held between the parent(s) and the director to develop a method of treatment for the problem and/

   or

   B. The director offers names of appropriate local support services to the parent(s).
   C. Written warning may be given to the parent(s) at this time.
4. After the above procedure has been followed, a child may be removed from the program if:
   A. The child poses a threat to self, staff or other children in the program.

B. The child behaves in manner that is difficult to manage in a large group.
C. The child or parent(s) uses abusive language or threaten other children or staff.
D. The child or family continue to act against preschool policies as explained in the parent handbook.
E. The director's professional judgment is that the child can no longer function effectively in the program and/or the program is being adversely affected by the child's presence.

5. It is the policy of the preschool to notify the parent(s) of a child with a written warning letter when infractions of policies occur and to hold a conference to discuss the problem before a child is removed from the program. However, some situations may occur that jeopardize the welfare of the children and/or staff. The director reserves the right to dismiss a student immediately if such an incident occurs.
7. A parent may appeal a decision made by the director by filing a written grievance with the school principal. (Vieira, 1989, p.9)

Preschool administrators may fear that a statement such as the one above will cause parents to hesitate to enroll their children. The safety of all children must be a paramount concern; the preschool administrator should stress that fact in a pre-enrollment interview.

Whatever the manner of presentation, due process demands that parents understand school rules and the consequences, including expulsion of the child, for behavior problems that interfere with the well-being of others.

Preschool administrators, like all school administrators, must insure that students and their parents are treated in a manner consistent with the requirements of civil law and the demands of the Gospel. The rudiments of Christian due process must be met: *notice* (the parent and the child are told what the child has done or is accused of doing); *hearing* (parent and/or child is allowed to present the child's side of the story); before an *impartial tribunal* (courts assume that school administrators are impartial and

will act in good faith). An avenue for appeal (such as the one described above which allows an appeal to the building principal) should be in place.

Field Trips

Field trips can pose many dangers for the preschooler. Although most accidents occur in classrooms because children spend most of their time there, off-campus activities pose greater dangers. Thus, preschool administrators must take the utmost care in the planning and conducting of field trips.

Faced with the potential for lawsuits arising from field trips, many school attorneys are advising school administrators to discontinue offering them to students. Such a policy is surely the safest legal course. Educators, however, know that all activity is dangerous, but that education requires exposure to the world outside the classroom.

At the very least, preschool administrators should be sure that every field trip has an educational purpose. Since preschoolers are very young, it is not difficult to find an educational purpose in most off-campus activities.

In planning for preschool field trips, administrators should bear in mind the previously mentioned principle, "The younger the child chronologically or mentally, the greater the standard of care." Inherently dangerous activities should be avoided. Parents must be informed of any potential dangers. Field trip permission forms should be required for all field trips.

It is possible to use a standard form giving "blanket" permission for field trips during the year, provided the trips are all to the same place. For example, if there is a park across from the school, a parent might be asked to sign a form giving permission for the child to go with his or her class to the park whenever the class goes to the park.

For all other trips, separate permission slips should be used. The following format or a similar one is strongly suggested:

> I/We, the parent(s)/guardian(s) of _____ request that the school allow my/our son/daughter to participate in (insert activity/trip). We hereby release and save harmless the school of _____ and any and all of its employees from any and all

> liability for any and all harm arising to my/our son/daughter as a result of this trip. (Shaughnessy, 1989, p. 47)

If both parents have custody, then both should sign the permission form. If one parent is out of town or otherwise unavailable, that fact should be noted on the form.

As far as possible, school buses and/or leased buses should be used for field trip transportation. Because of potential liabilities, the use of private cars should be avoided. In actuality, there are occasions in which private cars are the only possible form of transportation. If private vehicles are used, parents should sign a separate statement on the field trip form agreeing to the mode of transportation.

If parents are driving private automobiles, they should be told whether the school has insurance covering them in the event of an accident. If there is no school coverage, parents should understand that they can be held personally liable in the event of an accident. It is advisable to ask parent volunteer drivers to furnish the preschool administrator with proof of possession of insurance. The same cautions apply when teachers use their own cars. Thus, the use of teacher cars should be avoided.

Preschool administrators should consult with their insurance carrier concerning coverage for field trips and for any special requirements of the policy or company. For example, it is not uncommon for insurance carriers to require that volunteer drivers be at least twenty-five years of age. Since it is entirely possible that some parents of preschoolers are under twenty-five years of age, administrators need to understand the parameters of the insurance policies and to see that those parameters are met. It should be noted, however, that restrictions concerning parent volunteers may not be identical to those for paid staff. It is possible that preschool teachers will be under twenty-five years of age; the twenty-five year age restriction may not apply to them.

The ratio of children to adult chaperons for off-campus field trips should be stated in the preschool handbook. Many experts recommend one adult to every ten children in the primary grades. With preschoolers one

adult to every five children would be an advisable policy.

Preschool administrators must insure that parent volunteers understand their duties. A brief orientation should be held before each trip begins. It is highly advisable to have written directions for every trip.

A student who does not have a signed permission slip should not be allowed to go on the trip. Parent phone calls should not be accepted in place of the signed form. A non-standard form such as a handwritten note stating "Johnny can go with you today," should not be accepted as a parent could always maintain that he or she was not aware of the true destination. To help avoid these problems, administrators may wish to include a sample form in the preschool handbook. Parents who have forgotten or mislaid the proper form can then copy the appropriate form from the handbook.

Health and Safety

Although health and immunization forms are required for admission to preschool programs, it is advisable to state again what forms are necessary and what updating of information is required for continuance in the preschool program.

A policy should be included which states that children who have any sort of communicable disease will not be permitted to attend the preschool. Procedures for contacting parents of children exhibiting signs of illness during the school day should be clearly explained.

Procedures for dispensing medication must be outlined. Prescription medicine should be administered only when the medicine is in a prescription container with the child's name on it. Dispensing of both prescription and non-prescription medicine should require written permission stating the dosage and time(s) of day when medication should be given.

Types of toys which will not be accepted must be listed. Many preschools do not allow any kind of toy weapon. A statement in which the director reserves the right to determine the appropriateness of the toy should be included.

Emergency Procedures

The handbook should explain how parents will be contacted in the event of an emergency, illness or other problem. Parents should be called at home and/or at work. If the parent cannot be reached, emergency contacts indicated by the parent on the emergency or registration form should be contacted. The absolute *minimum* of emergency contacts permitted should be two.

It is a good idea to include a disaster plan in the handbook. For example, should the building housing the preschool be evacuated, where will the children be taken? How can the parent(s) contact school officials in the event of evacuation?

Nutrition

Handbooks should include some information concerning the importance of good nutrition. If parents are required to provide breakfast and/or lunch for a child, suggestions as to appropriate food choices should be made. If the preschool provides meals and/or snacks, the types of foods should be discussed. Menus should be posted in the preschool classroom or otherwise made available to parents.

Acceptable snack and/or "treat" items should be stated. Administrators must provide clear instructions as to what will be accepted as birthday treats. For example, will such foods as candy, cookies, cake and the like be accepted? Or are parents expected to provide more nutritious treats and/or non-edible items, such as small favors?

Single Parent/Other Relative Considerations

Preschoolers are particularly vulnerable to disputes between parents. It is not uncommon for a separated or divorced parent to instruct the school that the other parent is not to be allowed access to the child. Since the law holds that non-custodial parents do not cease to be parents when they no longer have custody of their children, it is important that preschool administrators include in handbooks the policies and procedures of the preschool with regard to non-custodial parents.

One of the most sound legal procedures is for the school to require that all divorced parents furnish the

school with a notarized copy of the custody section of the divorce decree. This information will enable the school to determine when, if ever, a child can be released to a non-custodial parent. (For example, some non-custodial parents have weekend visitation rights. It may be entirely appropriate for the parent to pick up the child at the preschool on Friday afternoon.) If there are questions, the preschool administrator should, of course, contact the custodial parent; if in doubt as to the appropriate course of action, the school or diocesan attorney should be consulted before any action is taken.

The Buckley Amendment, also known as the Family Educational Rights and Privacy Act, gave parents the right of access to student records. Although no court of record has yet heard a case involving Catholic schools and parental rights of access to records, this author believes Catholic schools would be well-advised to follow the requirements of the Buckley Amendment. A statement such as the following could be included in the preschool handbook:

This school abides by the provisions of the Buckley Amendment with respect to the rights of non-custodial parents. In the absence of a court order to the contrary, a school will provide the non-custodial parent with access to the academic records and to other school-related information regarding the child. If there is a court order specifying that there is to be no information given, it is the responsibility of the custodial parent to provide the school with an official copy of the court order. (Shaughnessy, 1989, p. 61)

Such a statement puts the parent on notice. Of course, the preschool will do everything within its power to protect the child and the custodial parent. But parents must understand that the burden of notifying the school of changes in custody status is theirs.

Other relatives can sometimes provide a problem for the preschool. Only parents, and those they designate, should be allowed to discuss the child with school officials. This requirement applies to aunts, uncles, cousins, and grandparents. Relatives sometimes wish to give information and sometimes, particularly if a divorce or separation is pending, to obtain information. All such relatives should be referred to the preschool administrator who may listen

to comments but who should not provide any information to the relatives without the consent of the parent.

Visitors

Preschools should, as far as possible, have an open door policy with regard to parent visits. The plethora of child abuse cases brought against preschool providers should indicate to administrators the importance of avoiding even the slightest hint of impropriety.

Parents should always be welcome. The school may make regulations regarding non-interference with other children and with the preschool program, as these are appropriate. Conversely, preschool administrators should insure that only parent visitors or their designated representatives are allowed in the preschool unless on appropriate official business; in such a case, the visitor should be accompanied by a school official at all times.

School's Right to Amend

It is always advisable to add a provision stating that the preschool administrator and/or the school retains the right to amend the handbook for just cause and that parents will be promptly notified in writing if changes are made.

Parent(s)' Signed Agreement

For the protection of both the school and the parent, parents should be asked to sign a statement such as, "We have read and agree to be governed by this handbook." Such a statement can help to avoid problems that could arise if parents state that they did not know such a policy or regulation existed.

A preschool would be well advised to refuse to admit a child until such a signed agreement is submitted. Since a handbook is part of the contract existing between the school and the parents, it is legally wise to insure that the parent has read the handbook and has agreed to be bound by it provisions.

A FINAL WORD

Jesus said, "Suffer the children to come unto me." Catholic preschools have the opportunity to lead little children to Jesus. Lessons learned in the early, formative years of preschool will be the seeds of adult life and faith.

The law is a parameter inside which the Catholic preschool, like all other schools, operates. The Gospel demands that we "render unto Caesar the things that are Caesar's and unto God the things that are God's." The Catholic preschool is one of the first places outside the home where children learn responsibility and experience love outside the home. The privilege of serving in a Catholic preschool is an awesome one. In an atmosphere in which children are protected and nurtured, in which their good is uppermost in the minds of adults, there can be little doubt that the demands of both the Gospel and civil law are being met.

BIBLIOGRAPHY

Black, Henry Campbell. (1979). *Black's Law Dictionary.* (5th ed.) St. Paul: West.

Day, Barbara. "What's Happening in Early Childhood Programs." In *Public School Early Childhood Programs,* ed. Cynthia Warger (1988). Alexandria: ASCD.

Clear, Delbert K. and Bagley, Martha. (1982). Coaching athletics: a tort just waiting for a judgment? *NOLPE School Law Journal, 10,* (2), 184-192.

Gatti, Richard D. and Gatti, Daniel J. (1983). *New Encyclopedic Dictionary of School Law.* West Nyack, NY: Parker.

KY Revised Statute 199.335 (2). Mish, F.C. (ed.). (1987). *Webster's Ninth New Collegiate Dictionary.* Springfield, Massachusetts: Merriam-Webster.

New Jersey v. T.L.O. 105 S. Ct. 733 (1985).

Permuth, Steve, et al. (1981). *The Law, the Student and the Catholic School.* Washington, D.C.: NCEA.

Prosser, William (1971). *Handbook of the Law of Torts.* (4th ed.). St. Paul, MN: West.

Shaughnessy, Mary Angela. *School Handbooks: Some Legal Considerations.* (1989). Washington, D.C.: NCEA.

Sheehan v. St. Peter's, 188 N.S. 2d 808 (Minn. 1971).

Smith v. Archbishop of St. Louis, 632 S.W.2d 516 (Mo. Ct. App. 1982).

Station v. Travelers Insurance Co., 292 So.2d 289 (La. Ct. App. (1974).

Valente, William D. (1980). *Law in the Schools.* Columbus: Merrill.

Wage and Hour Administrator, WLH Publication 1364.

Unpublished Pre-School Materials:

Sister Barbara Campbell, Early Education Materials, Diocese of Wheeling/Charleston.

Ms. Victoria May, Spalding University Preschool, Louisville, Kentucky.

Ms. Charlotte Vieira, Little Angels Program, South Catholic High School, Hartford, Connecticut.

INDEX

accidental injuries 15-21, 34-35
agreement 8, 10, 15, 28, 29
athletics 21
bishop 5-6, 17
Buckley Amendment 38
canon law 3-6, 13
child
  abuse 11-12, 39
  neglect 11-12
  reporting abuse 11-12
common law 6, 13
contract
  breach of 15
  law 6-8, 15, 27, 39
corporal punishment 15, 22
curriculum 28, 30
damages 15, 18
day care 1-4, 11
defamation 15, 23-24
discipline/disciplinary 7, 24, 28, 31-32
discrimination
  handicapped 8-10
  racial 8-9
  religious 8-9
  sex 8-9
dress code 7
due process 7, 33
emergency 19, 28, 37
evaluation 9, 33, 38
family 8, 38
  non-traditional 38
field trip 28-35
forms 6-7, 24-39
good faith 34
Gospel 7, 23, 33, 40
grievance procedures 33
handbooks 8, 11, 23, 27-39
insurance 35

liability 21, 35
tort 15-25
negligence 13-22
nutrition 37
parent
choice 37
communication with 7-11, 24-37
classroom visit 30, 39
divorced 35-38
handbook 8, 10, 27-39
rights 7-11, 17, 24, 31
sign handbook 8, 10, 30, 39
teacher conference 10, 24, 27, 30, 32
volunteer 36
playground 19-22
policy
academic 33, 36, 39
field trip 34-36
reporting 12
teacher 20
principal/administrator
amend handbook 33
delegation 3, 13
duties/responsibilities 3-4, 9-39
proximate cause 16-19
preschool, defined 1-3
reasonable
person 13, 16, 18-21
cause 11, 23
records, student 24, 38
access 38
school board 3, 5, 6, 10
search and seizure 15, 23
Sheehan v. St. Peters 19
Smith v. Archbishop of St. Louis 17-19
Station V. Travelers Insurance Company 21
student
admission 8-10, 30-31, 36
attendance 11, 31
dismissal 7, 32
dress code 7
records 24, 38

rights 6-7, 23-24, 31, 38
supervision 16-19
teacher
rights 10, 16
responsibility 10, 13, 16-24, 31, 35
tort liability 15-16, 18, 20, 22-23, 25
transportation 35

Sister Mary Angela Shaughnessy, SCN, Ph.D.

Sister Mary Angela Shaughnessy is a Sister of Charity of Nazareth who has taught at all levels of Catholic education from elementary through graduate school. She served eight years as principal of a Catholic school. She holds a bachelor's degree in English and a master's degree in education from Spalding University, a master's degree in English from the University of Louisville, and a Ph.D. in educational administration and supervision from Boston College. A regular speaker at NCEA conventions, she has given numerous workshops and lectures on Catholic schools and the law across the country. She is an adjunct professor in Boston College's Catholic School Leadership Program and in the University of San Francisco's Institute for Catholic Educational Leadership. Currently, Sister Mary Angela is Associate Professor of Education and Director of Doctoral Studies in Education at Spalding University, Louisville, Kentucky. She also serves as Consultant for Legal Concerns for the Office of Catholic Schools in Louisville. She is the author of two previously published NCEA texts: the 1988 *A Primer on School Law: A Guide for Board Members in Catholic Schools* and the 1989 *School Handbooks: Some Legal Considerations.*

National Catholic Educational Association
1077 30th Street, NW, Suite 100
Washington, DC 20007-3852
(202) 337-6232

BEST COPY AVAILABLE